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Hewlett Packard Company

**BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

In the Matter of the Petition for Review by  
Hewlett Packard Company of Order No. R1-2009-  
0025 Requiring Technical Reports Pursuant to Water  
Code Section 13267(b)

**PETITION FOR REVIEW  
AND REQUEST FOR  
HEARING**

Hewlett Packard Company ("Petitioner") hereby files this Petition for Review and Request for a Hearing by the State Water Resources Control Board ("State Board") of that certain Order No. R1-2009-0025 Requiring Technical Reports Pursuant to Water Code Section 13267(b) ("Order") dated March 2, 2009, by the Executive Officer of the California Regional Water Quality Control Board, North Coast Region ("Regional Board"). This Petition for Review is filed pursuant to the Water Code § 13320 and 23 CCR §§ 2050 et seq. A copy of the Order is attached hereto as Exhibit A.

Petitioner requests the State Board to hold this Petition in abeyance pursuant to 23 CCR § 2050.5. Petitioner reserves its right to seek a stay of the Order.

**I. Name and Address of Petitioner**

Petitioner is Hewlett Packard Company, 3000 Hanover Street, Palo Alto, California 94304. Petitioner may be contacted through its counsel of record:

Christopher M. Roe  
Fox Rothschild LLP  
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Exton, PA 19341

With a copy to:

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San Francisco, CA 94104-2734.

II. The Regional Board Action for Which This Petition for Review is Sought

The Regional Board action for which this Petition for Review is filed is the issuance of the Order No. R1-2009-0025 Requiring Technical Reports Pursuant to Water Code Section 13267(b), dated March 2, 2009.

III. Date the Regional Board Acted

The date of the Regional Board's action Petitioner requests the State Board to review occurred on March 2, 2009.

IV. Statement of the Reasons the Action was Inappropriate and Improper

The issuance of the Order was beyond the authority of the Regional Board and the finding of facts and issuance of the Order are unsupported by the record, inappropriate, and improper for the following reasons:

- A. The Order includes findings of fact that are not supported by substantial evidence in the record, and which are contrary to relevant evidence.
- B. The Order failed to include material facts supported by substantial, relevant evidence in the record. For example, and without limitation, the Order fails to recognize, reconcile, or address the July 11, 2005, memorandum from the Department of Toxic Substances Control, Human and Ecological Risk Division which evaluated extensive data and multiple risk assessments and recommended:

“Given the monitoring data as it currently exists, the response to the identified low level of vapor intrusion, for risk assessment purposes, should therefore also be at a low level; perhaps periodic monitoring.”

- C. The Order imposes remedial obligations and remedial performance standards through the framework of California Water Code Section 13267(b), which does not authorize the Regional Board to impose these

obligations, and without the procedural and factual basis that would be required by California Water Code Section 13304 for the issuance of a Cleanup and Abatement Order.

V. Petitioner is Aggrieved

Petitioner is aggrieved for the reasons set forth in paragraph IV above.

VI. Petitioner's Requested Action by the State Board

Petitioner respectfully requests that the State Board determine that the Regional Board's action in issuing the Order was inappropriate and improper, and that the State Board assume the power of the Regional Board to rescind or amend the Order in accordance with this Petition for Review and applicable law. Petitioner requests the State Board to hold in abeyance this Petition for Review and Request for Hearing pending the Regional Board's consideration of Petitioner's Request for Reconsideration and further discussions between Petitioner and the Regional Board. Petitioner will notify the State Board if it intends to activate this appeal.

VII. Statement of Points and Authorities

Petitioner will provide a detailed statement of points and authorities in the event it activates this Petition for Review.

VIII. List of Interested Persons

A list of interested parties is attached hereto as Exhibit C.

IX. Statement of Transmittal of Petition to the Regional Board

A copy of this Petition has been transmitted to the Executive Officer of the Regional Board on March 30, 2009.

X. Substantive Issues and Objections Raised in the Petition Were Presented to the Regional Board

Petitioner did not receive notice of nor participate in any hearing by the Regional Board prior to the issuance of the Order. Nevertheless, the documents, investigations and studies on which Petitioner would rely in pursuance of this Petition for Review are all in the record and have been raised before the Regional Board.

Furthermore, by letter dated March 30, 2009, Petitioner submitted a Request for Reconsideration to the Executive Director of the Regional Board requesting that the Regional Board reconsider and rescind the Order on the basis of the issues and objections raised in this Petition.

To the extent the State Board determines that any issues or objections were not raised before the Regional Board, Petitioner heretofore was unable to raise the issue or objections to the Regional Board because the Order was issued unilaterally by the Regional Board under California Water Code Section 13267(b) with no opportunity for the Petitioner to comment, question or discuss any issues or objections prior to the Regional Board's issuance of the Order.

XI. Request to Regional Board for Preparation of the Administrative Record

By copy of this Petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein, and for the administrative record to include, at minimum, the documents reflected in Exhibit B attached hereto. Petitioner reserves its right to request a hearing for the purpose of presenting additional evidence not previously presented to the Regional Board, in accordance with 23 CCR § 2050.6(b).

Respectfully submitted,

Date: March 30, 2009

By: Christopher M. Roe

Christopher M. Roe

Cristina Olivella

Fox Rothschild LLP

Attorneys for Petitioner Hewlett Packard Company

## EXHIBIT A

Order No.: R1-2009-0025 Requiring Technical  
Reports Pursuant to Water Code Section  
13267(b)

California Regional Water Quality Control Board  
North Coast Region

ORDER NO. R1-2009-0025

REQUIRING TECHNICAL REPORTS

PURSUANT TO WATER CODE SECTION 13267(b)

FOR

HEWLETT PACKARD COMPANY

Hewlett Packard Valley Site  
1201 Piner Road  
Santa Rosa

Sonoma County

The California Regional Water Quality Control Board, North Coast Region  
(hereinafter Regional Water Board) finds that:

1. Between 1972 and 1987, Hewlett Packard Company (hereinafter Discharger) occupied the building known as Building 1T, located on the parcel identified in Sonoma County Assessor's records as APN 015-670-024 (the site). The Discharger's operations within and surrounding Building 1T included 23 chemical use areas that generated chemical wastes including metals, volatile organic compounds, detergents, acids, and caustics. The documented chemical usage at Building 1T includes the use of trichloroethene (TCE), trichloroethane (TCA), and trichlorotrifluoroethane (Freon).
2. The Discharger conducted soil and groundwater sampling and analysis at the site in 1986 and 1987. The analytical results documented the presence of halogenated volatile organic compounds (HVOCs) in soil and groundwater beneath and surrounding Building 1T including: tetrachloroethene (PCE), TCE, TCA; Freon, dibromochloromethane, toluene, ethyl benzene, xylenes, and dichloroethene (DCE).
3. Building 1T was converted into office space when the Discharger ceased operations at the building in 1987 and vacated the building. Building 1T was subsequently remodeled to accommodate occupancy by a church and a private school.

4. On March 10, 1982, the Regional Water Board issued *Cleanup and Abatement Order 82-31* requiring the Discharger to clean up and abate the effects of the unauthorized discharges at the site. Studies conducted by the Discharger to comply with *Order 82-31* revealed additional areas of groundwater contamination that appear to be the result of additional discharges unrelated to those identified in *Order 82-31*. Subsequent sampling revealed that waste solvents, including TCE were being released to Piner Creek through recharge of the surface water from seepage of contaminated groundwater. On June 15, 1982, the Regional Water Board issued *Cleanup and Abatement Order 82-33*, amending *Order 82-31* and requiring the Discharger to cease the discharge of wastes into Piner Creek. *Order 82-33* also required the Discharger to submit a plan to clean up and abate the effects of waste solvents already discharged to areal groundwaters and to prevent any further discharges of waste solvents to Piner Creek .
5. In July 2002, the Discharger sampled soil gas beneath Building 1T. Analytical results for the soil gas samples showed the presence of the following HVOCs in soil gas beneath the building: PCE, TCE, TCA, Freon, DCE, and vinyl chloride. These are the same chemicals, or their daughter products, that were used at Building 1T, and were identified in the soil and groundwater samples collected from beneath the building in 1986 and 1987.
6. In July 2002 and in March 2003, the California Department of Toxic Substances Control (DTSC) conducted indoor and outdoor air sampling at Building 1T to determine whether human exposure to chemicals released at this former Resources Conservation Recovery Act (RCRA) permitted facility was under control. DTSC toxicologists reviewed the data to assess the air quality within the building and reported their findings in memoranda to the Regional Water Board dated June 4, 2003 and June 10, 2003. The DTSC toxicologists concluded:

“... the occupants of Building 1T and the Former Cafeteria at the Site have been and continue to be exposed to volatile organic compounds in the indoor air that originate by vapor intrusion from the soil and groundwater located beneath the structures. The concentrations detected in these locations exceed risk-based levels. DTSC recommends the responsible party(s) be required to immediately submit corrective action alternatives to mitigate these risks to the building occupants.”
7. In September 2003, the Discharger elected to install a soil vapor extraction (SVE) system to eliminate the potential vapor intrusion pathway to indoor air. In October 2004, the SVE system operations and testing were initiated. Between October 2004 and July 2005, the SVE system was operated intermittently. The SVE system operated continuously from

July 2005 to December 2006. In December 2006, the Discharger resumed intermittent operation of the SVE system consistent with the current operations plan, which allows the system to be shut down for one month before reassessing TCE levels in soil vapor samples.

8. In January of 2008, the Discharger submitted the 2007 SVE system annual report to the Regional Water Board. The reported SVE operational and analytical data show that between November 2006 and October 2007, when the SVE system was operated intermittently, soil gas beneath the Building 1T exceeded the California Human Health Screening Level for TCE more than half of the time. In a meeting with the Discharger on January 24, 2008, Regional Water Board staff requested a revised SVE operations plan to address the potential HVOC soil vapor exposures during prolonged system shutdown.
9. In a telephone discussion with Regional Water Board staff on February 19, 2008, the Discharger agreed to resume continuous operation of the SVE system until the Discharger had prepared and submitted an acceptable new operations plan for evaluating SVE system shutdown. On February 23, 2009, the Discharger submitted to Regional Water Board staff, by email, a copy of a letter from Geosyntec Consultants dated March 3, 2008, which states: "For 2008, HP has elected to modify the operation of the SVE system to run continuously regardless of the TCE concentrations observed in the system influent samples." The Regional Water Board records did not contain nor document prior receipt of the March 3, 2008 letter. And, as of the date of this Order, the 2008 annual report of SVE system operations to verify the continuous operation of the SVE system has not been received
10. In a letter dated September 29, 2008, Regional Water Board staff again requested the Discharger to submit a revised SVE operations plan to document its intention to operate the SVE system continuously. As of the date of this Order, the Discharger has not submitted a revised SVE operations plan.
11. On January 1, 2005, the State Water Board adopted regulations that require electronic submittal of information (ESI) for soil and groundwater of underground storage tank (UST) cases and non-UST cleanup programs, including Spills-Leaks-Investigations-Cleanups (SLIC) sites, Department of Defense sites (DOD), and Land Disposal programs. These requirements are applicable to the investigation and cleanup activities being conducted at the Hewlett Packard Valley Site. To date, the Discharger has not submitted all the required reports in accordance with these regulations. Internet access to reports that document the operation and effectiveness of the SVE system is necessary to provide information about the site investigation and cleanup to interested parties and the general public.



12. The following sections of the Water Code authorize the Regional Water Board Executive Officer to require persons suspected of violating Basin Plan objectives to provide technical information and reports:
  - a. Section 13267(a) - *"A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the State within its region."*
  - b. Section 13267(b) - *"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this State who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the State within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports."*
13. All of the technical reports required by this Order are necessary to ensure that the prior harm and future threat to water quality and associated nuisance conditions created by the discharges described above are properly abated and controlled.
14. The occupants of Building 1T have been exposed, and continue to be threatened with exposure, to volatile organic compounds in the indoor air that are caused by the soil and groundwater HVOC contamination located beneath the structure. The concentrations of HVOCs that have been detected in indoor air at Building 1T exceed risk-based levels. In light of the presence of TCE above acceptable health risk screening levels in soil vapor beneath Building 1T, and the source of contamination in soil and groundwater, the burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom .
15. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
16. Failure to comply with the terms of this Order may result in further enforcement under the California Water Code. Any person failing to provide

technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to clean up or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13385, subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged. Any person discharging waste into navigable waters of the United States without waste discharge requirements is, pursuant to Water Code section 13385(c), subject to administrative civil liabilities of up to ten thousand dollars (\$10,000.00) per day in which the discharge occurs, plus ten dollars (\$10.00) per gallon of waste discharged, and may also be subject to criminal prosecution pursuant to Water Code Section 13387.

17. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with California Water Code section 13320 and Title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code section 13267(b), the Discharger shall, by April 1, 2009:

1. Submit for concurrence by the Executive Officer a revised operations plan for the soil vapor extraction system that will ensure that the SVE system is operated in a manner that consistently prevents the intrusion of toxic volatile compounds from the subsurface into indoor air at Building 1T. The revised operations plan shall identify a strategy for future evaluation of VOC levels in soil gas beneath Building 1T.
2. Submit certification that the Discharger (or authorized representative) shall operate the SVE system continuously to prevent vapor intrusion from the subsurface to indoor air until the Regional Water Board Executive Officer concurs with the revised SVE operations plan. Upon concurrence with the revised SVE operations plan, the plan shall be incorporated into the SVE system operation and maintenance manual for reference by those employees authorized to operate the system.

3. Submit the Annual SVE System Operation Report for the year 2008.
4. Upload the following technical documents in electronic data format into the Geographic Environmental Information Management System database (Geotracker):
  - a. *Evaluation of SVE System, Former HP Valley Site, Building 1T*, dated July 21, 2006
  - b. *Soil Vapor Extraction System Operation Plan*, dated October 17, 2006;
  - c. *Soil Vapor Extraction System Annual Operation Report*, dated January 11, 2008.

Ordered by: \_\_\_\_\_  
Catherine Kuhlman  
Executive Officer

March 2, 2009

030209\_jat-HP Valley 13267 Order Feb07.doc

## EXHIBIT B

### Non-Exhaustive List of Documents in Record

Date	Document Type	Title [author]	Description
24-Jan-86	Report	Remedial Action Feasibility Study [McLaren Environmental]	
1-Sep-87	Report	Building 1T Hydrogeologic Investigation [McLaren Environmental]	
30-Apr-02	Letter	Soil Gas Investigation Work Plan, Valley Site, 1201 Piner Road [GeoSyntec]	
15-May-02	Letter	Soil Gas Investigation Work Plan Review and Comments [James Tischler, RWQCB]	
22-May-02	Letter	Modified Soil Gas Investigation Work Plan, Valley Site [Elizabeth McDonald, HP]	
6-Jun-02	Letter	Review of Modified Soil Gas Investigation Work Plan, HP Valley Site [Michael Schum, DTSC]	
29-Jul-02	Report	Soil Gas Investigation Report [GeoSyntec]	
6-Sep-02	Letter	Review of Soil Gas Investigation Report, HP Valley Site [Michael Schum, DTSC]	
2003	Materials		"Minutes and materials from 2003 public presentation by the DTSC and RWQCB regarding the 2003 HERD Risk Assessment of 1201 Piner Road, Santa Rosa, California"
7-Feb-03	Report	Data Evaluation Report [GeoSyntec]	Evaluate long-term monitoring data, July 2202 soil gas data, DTSC flux chamber and ambient air data

19-Jun-03	Work Plan	Indoor and Outdoor Air Sampling Work Plan [GeoSyntec]	
25-Jun-03	Letter	Letter from DTSC to HP, "Response to your letter dated June 16, 2003, regarding the Former Hewlett Packard Santa Rosa, CA, Valley Site"	
25-Jun-03	Work Plan	Additional Soil Gas Investigation Work Plan [GeoSyntec]	
25-Jul-03	Work Plan	Second Round Indoor and Outdoor Air Sampling Work Plan [GeoSyntec]	
1-Aug-03	Letter-report	Summary of HVAC Systems Modifications to Date and Verification of Positive Interior Air Pressures - Building 1T and Former Cafeteria [GeoSyntec]	
1-Aug-03	Letter	Transmittal letter to Jim Tischler, transmitting Summary of HVAC Systems Modification to Date [GeoSyntec]	
16-Sep-03	Report	Results of Indoor and Outdoor Air Sampling, Soil Gas Investigation, and Refined Indoor Air Risk Assessment [GeoSyntec]	
19-Sep-03	Letter	Letter to Jim Tischler, transmitting "Results of Additional Indoor and Outdoor Air Sampling, Soil Gas Investigation and Refined Indoor Air Risk Assessment, Former HP Valley Site" [HP]	
10-Oct-03	Letter	Letter to Michael Wagner of Sonoma County, "3273 Airway Drive, Santa Rosa" [RWQCB]	
15-Mar-04	Report	Comparative review and analysis of the two reports entitled, (1) "Results of Indoor and Outdoor Air Sampling, Soil Gas Investigation, and Refined Indoor Air Risk Assessment," September 16, 2003, prepared by GeoSyntec Consultants, and (2) "Review of Technical Memorandum: Results of the Follow-Up Ambient Air Testing Conducted at the Valley Site"	

		Located in Santa Rosa, California," June 4, 2003, prepared by the Human and Ecological Risk Division (HERD) of the Department of Toxics Substances Control (DTSC) [SOMA Corporation]	
30-Sep-04	Report	Supplemental Volume, Results of Indoor and Outdoor Air Sampling, Soil Gas Investigation, and Refined Indoor Air Risk Assessment	Supplemental info. Requested by DTSC
Dec-04	Report	Human Health Evaluation for Sonoma County Office of the County Counsel, Santa Rose, CA [Malcolm Pirnie]	
7-Jan-05	Report	Additional Investigation Report [GeoSyntec]	
25-Feb-05	Report	Ap. 8680; Plant 278; S-1, SVE System Startup Report	
21-Mar-05	Report	Additional Evaluation of the Vapor Intrusion Pathway [GeoSyntec]	
18-Apr-05	Work Plan	Additional Investigation Work Plan [GeoSyntec]	
18-Apr-05	Letter	Letter to James Tischler transmitting Additional Investigation Work Plan [HP]	
3-May-05	Letter	Review and comments on April 18,2005 Additional Investigation Work Plan for Former HP Valley Site Building 1T [RWQCB]	
11-Jul-05	memo	DTSC Review of Results of Indoor and Outdoor Air Sampling, Soil Gas Investigation, and Refined Indoor Air Risk Assessment (supplemental volume) [DTSC]	
22-Jul-05	Letter	Letter to Jim Tischler [HP]	Commenting on DTSC 11 July 2005 memo
19-Sep-05	Report	Additional Soil Investigation Report [GeoSyntec]	
19-Sep-05	Letter	Letter to James Tischler transmitting Additional Investigation Report [HP]	
6-Dec-05	Letter	Letter to Rivera/Tischler regarding Evaluation of SVE system and transmitting work plan for evaluation of SVE system [HP]	Letter also corrects record from Dellechiaie email

21-Jul-06	Letter	Letter to Jim Tischler transmitting report "Evaluation of SVE System Former HP Valley Site, 1201 Piner Road Santa Rosa, CA" [Elizabeth McDonald, HP]	
21-Jul-06	Report	Evaluation of SVE System [Geosyntec]	
17-Oct-06	Letter	Letter transmitting SVE Operation Plan to Jim Tischler [GeoSyntec]	
17-Oct-06	Report	SVE System Operation Plan [GeoSyntec]	

## EXHIBIT C

### List of Interested Parties

Marilyn Jakowchik  
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